

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 21 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Establishment of Advisory) CC Docket No. 92-297
Committee to Negotiate)
Proposed Regulations)

COMMENTS OF
GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom") hereby comments on Public Notice 41726 (released February 11, 1994) ("Notice") concerning whether to establish an Advisory Committee to negotiate regulations defining the technical rules applicable to sharing the 27.5 - 29.5 GHz Ka-band by various services, including Fixed Satellite Services (FSS). Should a negotiated rulemaking committee (NRC) be formed, GE Americom hereby requests that it be appointed to the NRC.

Under the Negotiated Rulemaking Act, the Commission may grant membership on a negotiated rulemaking committee to "Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented" by parties tentatively designated by an agency. 5 U.S.C.A. § 563(b) (West 1993). As a leading provider of fixed-satellite services in C-band and Ku-band with an interest in expanding the use of satellite-based services to Ka-band, GE Americom will be "significantly affected" by any proposed rule

No. of Copies rec'd 025
List ABCDE

regarding sharing this band.¹ In addition, if a negotiated rulemaking is convened, GE Americom believes that its interests can not be adequately represented by any of the other parties identified by the Commission as participants in the NRC.

GE AMERICOM CANNOT ADEQUATELY BE REPRESENTED
BY ANY OF THE PARTIES IDENTIFIED BY THE
COMMISSION AS PARTICIPANTS IN THE NRC

In its Notice, the Commission has tentatively identified certain significantly affected organizations to participate in the NRC. Among these are at least seven organizations whose interests are aligned with Local Multipoint Distribution Service (LMDS), including potential operators and manufacturers of LMDS equipment and others who represent LMDS interests;² and five parties whose interests are related to Mobile Satellite Service (MSS).³ On the FSS side, however, only one party has a direct interest in commercial use of FSS, Hughes Space and Communications Company.⁴ The only other organization

¹ The Commission acknowledges that "fixed-satellite service applicants and service providers" are one of the sectors "most likely to be significantly affected by the proposed rules." Notice at ¶ 7.

² These are Suite 12 Group, Bell Atlantic Companies, Video/Phone Systems, Inc., Endgate Co., Gigahertz Equipment Co., David Sarnoff Research Center, and University of Texas. Notice at ¶ 8.

³ Elipsat Corp., Motorola Satellite Communications, Inc., Loral/Qualcomm Satellite Service, Inc., TRW, Inc., and American Mobile Satellite Corp. Notice at ¶ 8.

⁴ Comsearch has been nominated to the NRC by the Commission. GE Americom views Comsearch as having no particular affiliation with LMDS, MSS or FSS.

tentatively identified as a participant in the NRC with an interest in FSS is the National Aeronautics and Space Administration (NASA).

GE Americom's Interests Cannot Be Represented by LMDS or MSS Parties

GE Americom's interests in obtaining adequate access to the 28 GHz band to provide quality services to satellite customers cannot be adequately represented by any LMDS or MSS party. It has been clearly established in previous phases of this proceeding that use of the Ka-band for LMDS is incompatible with use for FSS unless some method of accommodation is reached to reduce or eliminate unacceptable interference.⁵

The identical situation exists with respect to MSS operators. Although both FSS and MSS use space technologies, MSS requirements for feeder links in the 28 GHz band are not compatible with simultaneous use of those frequencies for FSS.

GE Americom's Interests Cannot be Adequately Represented by Either Hughes Communications Galaxy or NASA

GE Americom's interests also cannot be adequately represented by either Hughes Communications Galaxy or NASA. Hughes is one of GE Americom's competitors within the FSS market, a fact which raises at least the potential for a conflict of interest. Moreover, Hughes should be expected to advocate a

⁵

Second Notice of Proposed Rulemaking, Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, FCC 2d _____, Order FCC 94-12 (released February 11, 1994) ("Second NPRM"), ¶ 28.

course of action that is consistent with its recent application to construct, launch and operate two Ka-band satellites.⁶

Hughes's Ka-band Application envisions a VSAT-based network that emphasizes narrow-beam, spotbeam-based services, an approach to the use of the Ka-band which may be incompatible with a variety of other services that can be delivered via Ka-band satellites, such as point-to-multipoint distribution of video programming to cable head-ends and home-based satellite antennas in competition with Hughes's DirectTV business.

In discussing with GE Americom its participation on the NRC, Hughes has indicated that it plans to advocate the widest practicable FSS use of the 28 GHz band. However, there is no way to determine whether, in response to a need for consensus, this position may or ought to change and, if so, to what extent. Hughes cannot be expected to understand how potential compromises will affect GE Americom's interests, nor can GE Americom be expected to share its plans with its competitor in sufficient degree to permit Hughes to represent its interests. This problem is exacerbated by the relative under-representation of FSS interests as referenced elsewhere in these comments.

For different reasons, NASA cannot be expected to represent GE Americom adequately. ACTS, the NASA Ka-band satellite, is a publicly-funded, experimental satellite system designed to

⁶

Application of Hughes Communications Galaxy Before the Federal Communications Commission for Two Ka Band Domestic Fixed Communications Satellites (dated Dec. 3, 1993).

address the technical issues surrounding the use of Ka-band frequencies. NASA's mission does not include analysis of and response to the myriad customer-driven issues involved in the construction, operation, and marketing of commercial satellites. GE Americom, on the other hand, has a substantial background in all of these areas -- knowledge which it has compiled by virtue of satellite construction, operation and marketing experience spanning almost two decades.

Also, NASA expressed what GE Americom considers to be a short-range view regarding use of the Ka-band system when it requested that the Commission not redesignate Ka-band for a period of five years. This view is consistent with NASA's mission to provide a window of opportunity for commercial Ka-band services to develop.⁷ However, the five years' delay in redesignation of the Ka-band requested by NASA contrasts sharply with GE Americom's view, which is based on the long lead-times required for manufacturing and marketing satellite-based services and the substantial upfront investment required.

FSS Band Interests Are Under-represented on the Proposed NRC

Recognizing that various MSS operators have presented somewhat different proposals for implementing their MSS plans, the Commission has tentatively nominated five MSS operators to participate in the NRC. Similarly, the Commission has tentatively nominated seven organizations with LMDS interests to participate in the NRC. With respect to FSS, however, the

⁷

Second NPRM at ¶ 14.

Commission as nominated only two participants, and, as described above, those participants are not able to adequately represent the broad spectrum of FSS interests.

It would be in the best interest of promoting effective sharing rules that other affected FSS viewpoints be represented. Obviously, the Commission shares this approach in its tentative designation of parties to represent the LMDS and MSS constituencies, each of which will enjoy the participation of several representatives and different perspectives. It would be consistent with the approach of the Notice to provide a broader representation of FSS interests in the 28 GHz band and to designate GE Americom as a participant in the NRC.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alexander P. Humphrey". The signature is fluid and cursive, with a long, sweeping underline.

Philip V. Otero
Alexander P. Humphrey
GE AMERICAN COMMUNICATIONS, INC.
1299 Pennsylvania Ave, N.W.
Washington, D.C. 20004

March 21, 1994